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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,325	01/22/2004	Marcel Huard	12296-17US-2 IC/ii	2664
20988	7590	09/08/2005	EXAMINER	
OGILVY RENAULT LLP 1981 MCGILL COLLEGE AVENUE SUITE 1600 MONTREAL, QC H3A2Y3 CANADA			PIERCE, WILLIAM M	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/761,325	Applicant(s) HUARD ET AL.	
	Examiner William M. Pierce	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 55-79 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 55-79 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION***Claim Rejections - 35 USC § 102***

Claims 55-63 and 66-79 are rejected under 35 U.S.C. 102(b) as being anticipated by Beltran 6,065,752.

As to claims 55-61, 74 and 75 Beltran shows betting cards 104, a bet recorder 202, a random card selector 109 and a payout calculator 208. As to claim 62 and 63, 106 is considered to be a bet securing recorder. The function of the element as recited in the claim fails to distinguish over the applied art as applied above with respect to Schreiber. As to claims 76-78 chips used in the game of Beltran are considered betting markers. As to claim 79, a chip placed on the "0" bet spot is considered to be a outside identifier. As to claim 66, 69-73, the "7" spaces in the middle of the playing surface as shown in fig. 1 is considered to be an outside card. As to claim 68, the awarding of a free turn as an incentive to play a game is considered old and well known. In conclusion, this rejection is largely base on the fact that, in an apparatus claim, the claimed invention must distinguish itself from the prior art in terms of structure rather than function. Applicant believes that his invention is different in that "each card is not available separately for a bet" (pg. 17, middle), however, such is not a limitation of the claims. As such this argument is not persuasive. In Beltran a player has a choice of n number of cards. At step 204 he can select any number or combination of cards for wager as called for by applicant's claimed invention. Whether or not differences exist between Beltran and applicant's intended invention of two cards being drawn in Beltran, the invention as claimed does not distinguish over this applied art.

Claims 64 and 65 are rejected under 35 U.S.C. 102(b) as being anticipated by Porto, 6,520,503.

As to claim 64, Porto shows a betting numbers display 102, a betting numbers recorder 104, a bet securing numbers recorder 122, random number selector 106 and a payout calculator being the dealer. As to claim 65 in Porto when a bet securing number of "0" is chosen a payout amounting to zero is calculated. Applicant's arguments filed 6/22/05 have been fully considered but they are not persuasive.

With respect to Porto, applicant argues that his "invention is required to have at least roulette numbers 1 to 36 and 0". Disclosed in Porto is "the basic rules for...roulette are well known to even non-gamblers" [0005] Inherent in the disclosure of Porto are the traditionally used indicia of roulette. Skill is presumed on the part of those practicing in the art. See *In re Sovish*, 769 F.2d 738, 743, 226 USPQ 771, 774 (Fed. Cir. 1985) and that in evaluating a reference, it is proper to take into account not only the specific teaching of the reference(s) but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. In *re Preda*, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968). Additionally, one must observe that an artisan must be presumed to know something

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about the art apart from what the references disclose (see *In re Jacoby*, 309 F.2d, 513, 516, 135 USPQ 317, 319 (CCPA 1962). Examiner's position with respect to the number identifiers, bet securing numbers and payout calculator is set forth above and is considered fairly taught by the art of record.

With respect to the examiners interpretation of 122 as being a bet securing number, applicant has not shown where the limitation in the claim distinguishes over such an interpretation of Porto.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 55-67, 69 and 74-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson 4,149,728.

Shown is displaying cards from a standard deck in fig. 2, drawing at random (col. 2, ln. 5), calculating a payout which is inherent in wagering games. The use of cards for generating indicia in roulette type game is old and well known. To have replaced the wheel 12 of Thompson with a deck of cards would have been an obvious matter of replacing one known chance device for that of another.

As to claims 56-61, fig. 2 shows bets with respect to ranges, color, parity and suit. As to claims 62 and 63, bets 22 are considered to be recording a securing bet. As to claims 66, 67 and 69, the joker cards are considered "outside cards" in which all bets lose when the card is drawn.

Claims 68 and 70-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson 4,149,728 in view of Baker.

As to claim 68 the addition of a free turn card in card games to add interest to the game would have been obvious to one of ordinary skill in the art. For example see Baker in which the Gold card allows a player to bet again. As to claims 70-73, the choice of cards to allow a wager on and those to identify as "outside cards" are considered an obvious matter of design choice.

Conclusion

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Applicant's arguments filed 6/22/05 have been fully considered but they are not persuasive.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication and its merits should be directed to William Pierce at E-mail address bill.pierce@USPTO.gov or at telephone number (571) 272-4414.

For **official fax** communications to be officially entered in the application the fax number is (703) 872-9306.

For **informal fax** communications the fax number is (703) 308-7769.

Any inquiry of a general nature or relating to the **status** of this application or proceeding can also be directed to the receptionist whose telephone number is (703) 308-1148.

Any inquiry concerning the **drawings** should be directed to the Drafting Division whose telephone number is (703) 305-8335.


WILLIAM M. PIERCE
PRIMARY EXAMINER